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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,006	12/11/2006	Heiner Sann	08146.0014U1	9311
23850	7590	12/07/2010	EXAMINER	
Ballard Spahr LLP SUITE 1000 999 PEACHTREE STREET ATLANTA, GA 30309-3915			FAYYAZ, NASHIMIYA SAQIB	
			ART UNIT	PAPER NUMBER
			2856	
			MAIL DATE	DELIVERY MODE
			12/07/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/586,006

**Applicant(s)**

SANN ET AL.

**Examiner**

NASHMIYA FAYYAZ

**Art Unit**

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3-5 and 7-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, and 7-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 3-5, and 7-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 1 and 18, it is unclear how the "second container" is "completely isolated" from the rest of the medium during discharge since the outside of the container is still within the medium as in the last paragraphs. In claim 3, on line 1, the dash before "is" is unclear. Also, it is unclear what "line" is being referred to since claim 1 has already recited the second container. Please identify this additional line.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3-5, and 7-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grant-US Patent # 3,289,482. As to claims 1 and 18, as best understood, Grant discloses a gas sampling device and method including a non-return valve element (ball valve 8) arranged in a sample probe (valve housing 9) as an inlet (bore in valve housing 9), the valve being opened by negative pressure created by piston 11 retracting via actuator 14, a supply line (gas conduit 18) which is able to convey gas, one discharge line (bore 5 leading to duct 17 connecting to conduit 19) which is able to generate negative pressure via the piston and discharge the sample to conduit 15 via suction created by piston, all arranged on a side of the element that is remote from the medium, where the supply line and discharge line are directly connected to a second container (sample head 2) which receives the sample and is isolated from the rest of the medium during discharge when the ducts 16 and 17 are opened and the valve 8 closes, see figure and col.2, lines 51 et seq. It is noted that Grant lacks a teaching for a first container. First it is noted that the sampling of a gas from a first container appears merely to be intended usage and that the device itself has no specialized feature drawing breadth or life from the intended usage of sampling from a container. On the other hand, although a container is not disclosed, per se, it is old and well-known to sample gases from containers of all shapes and sizes. Also, the room within which the sample is can be considered a container. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to have

designated a "container" from which the sample is taken since Grant indicates sampling from a "static system", see col. 1, lines 49-51 and a container would be a well-known static system. As to claim 3, the bore 5 is a line between the supply and discharge lines. As to claim 4, note that claim 4 appears repetitive of claim 1. As to claim 5, note that actuation of the actuator supplies gas a positive pressure to the piston to close the valve. As to claims 7 and 8, note the ducts 16 and 17 appear to have sheathing of head 2 and also note col. 4, lines 4 et seq reciting usage of heaters to control the temperature, as well. As to claims 9 and 10, usage of a gas conveying connecting line for joining to a gas supply along with valves for controlling the flow would have been obvious to one of ordinary skill in the art at the invention in order to supply the gas such as nitrogen, as recited which would require a supply and line to convey the gas and valves to control the on and off supply. As to claims 11 and 12, usage of a pressure gauge and filter are considered obvious design choices known in the art for monitoring the flow and protecting the gas from contamination, respectively. As to claims 13-17 and 19-20, note that nitrogen is used for continuous flow in col. 3, lines 11-18 and usage of a conveying line and rinsing fluid container and filter would have been obvious to one of ordinary skill in the art at the time of invention to supply the gas to the line given and maintain its sterility and repeating of the rinsing would obviously increase the rinsing.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1, 3-5, and 7-20 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NASHMIYA FAYYAZ whose telephone number is (571)272-2192. The examiner can normally be reached on Tuesdays and Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on 571-272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hezron Williams/  
Supervisory Patent Examiner, Art  
Unit 2856

/N. F./  
Examiner, Art Unit 2856